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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 BRYCE A. ECKLEIN,

10 Plaintiff,

Case No. C20-1267-MLP

11 v.

ORDER

12 STATE OF HAWAII,

Defendant.

13
14 I. INTRODUCTION

15 This matter is before the Court on the State of Hawaii’s Motion to Dismiss (“Defendant’s
16 Motion”) seeking to dismiss Plaintiff Bryce Ecklein’s complaint for lack of subject matter
17 jurisdiction and improper venue. (Def.’s Mot. (Dkt. # 11) at 1.) In the alternative, Defendant
18 requests that this action be transferred to the District of Hawaii. (*Id.*) Plaintiff opposed the
19 motion (Pl.’s Resp. (dkt. # 12)) and Defendant filed a reply (Def.’s Reply (dkt. # 13)). Neither
20 party requested oral argument. Having considered the parties’ submissions, the balance of the
21 record, and the governing law, Defendant’s Motion (dkt. # 11) is GRANTED, and this matter is
22 DISMISSED with prejudice for lack of subject matter jurisdiction.

II. BACKGROUND

The Hawaii Real Property Tax Act (“HARPTA”), as codified in the Hawaii Revised Statutes (“H.R.S.”), requires transferees of real property located in Hawaii to “deduct and withhold a tax equal to 7.25 percent of the amount realized on the disposition of Hawaii real property.” H.R.S. § 235-68(b). Under HARPTA, all transfers of Hawaii real property are subject to the withholding requirement unless an enumerated exception applies. *See* H.R.S. § 235-68(d)-(g). Pertinent to this matter, a transferor is exempt from the withholding requirement if they are a Hawaii resident. H.R.S. § 235-68(d)(1).

Plaintiff's complaint alleges the State of Hawaii committed various violations of the Commerce Clause, Privileges and Immunities Clause, Due Process Clause, and Equal Protection Clause of the United States Constitution by enacting HARPTA. (Pl.'s Compl. (Dkt. # 1) at 3.) Plaintiff alleges that H.R.S. § 235-68 is unconstitutional because it requires the withholding of state tax for Hawaii nonresidents, while not requiring the withholding of state tax for Hawaii residents. (*Id.* at 5.) Consequently, Plaintiff's requested relief seeks that: (1) H.R.S. § 235-68 be either repealed, rewritten to include Hawaii residents, and/or the withholding process altered; (2) all affected parties be reimbursed for monies withheld under H.R.S. § 235-68 since its inception; and (3) that payment from this action include "interest and loss of use penalty." (*Id.*)

III. LEGAL STANDARD

Federal courts have limited jurisdiction and “possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (citations omitted). When presented with a motion to dismiss pursuant to Rule 12(b)(1), the Court favorably views “the facts alleged to support jurisdiction.” *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000) (citing *Boettcher v. Sec. Health & Human Servs.*, 759 F.2d 719, 720

1 (9th Cir. 1985)). A federal court is presumed to lack subject matter jurisdiction until the plaintiff
 2 establishes otherwise. *Kokkonen*, 511 U.S. at 377; *Stock West, Inc. v. Confederated Tribes*, 873
 3 F.2d 1221, 1225 (9th Cir. 1989).

4 A complaint must be dismissed under Rule 12(b)(1) if, “considering the factual
 5 allegations in the light most favorable to the plaintiff, the action: (1) does not arise under the
 6 Constitution, laws, or treaties of the United States, or does not fall within one of the other
 7 enumerated categories of Article III, Section 2, of the Constitution; (2) is not a case or
 8 controversy within the meaning of the Constitution; or (3) is not one described by any
 9 jurisdictional statute.” *Baker v. Carr*, 369 U.S. 186, 198 (1962); *see D.G. Rung Indus., Inc. v.*
 10 *Tinnerman*, 626 F.Supp.1062, 1063 (W.D. Wash. 1986). The Court holds *pro se* plaintiffs to less
 11 stringent pleading standards than represented plaintiffs and liberally construes a *pro se* complaint
 12 in the light most favorable to the plaintiff. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Blaisdell*
 13 *v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013).

14 IV. DISCUSSION

15 Defendant argues that the Tax Injunction Act, principles of comity, and the Eleventh
 16 Amendment require dismissal of this action for lack of subject matter jurisdiction because
 17 Plaintiff’s sought relief would hinder the application or enforcement of Hawaii state taxes.
 18 (Def.’s Mot at 5.) Plaintiff generally counters that the Court has subject matter jurisdiction over
 19 his claims because: (1) the Court has the power to hear federal questions involving violations of
 20 constitutional rights under 28 U.S.C. § 1343; (2) the Tax Injunction Act “cannot . . . impinge on
 21 basic rights granted/guaranteed by the Constitution”; (3) a suitable state remedy does not exist
 22 for comity purposes; and (4) the Eleventh Amendment does not bar this action under
 23 *Pennsylvania v. Union Gas*, 491 U.S. 1 (1989) and the Fourteenth Amendment’s Privileges and

1 Immunities Clause.¹ (Pl.’s Resp. at 2-5.) Plaintiff additionally argues that this case cannot be
 2 fairly transferred to Hawaii because all Hawaii judges have a potential conflict of interest. (*Id.* at
 3 6-7.)

4 As further explained below, construing Plaintiff’s complaint in the light most favorable to
 5 Plaintiff, this action is dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) because
 6 this Court lacks subject matter jurisdiction to adjudicate Plaintiff’s claims.

7 **A. Tax Injunction Act**

8 Pursuant to the Tax Injunction Act, “[t]he district courts shall not enjoin, suspend or
 9 restrain the assessment, levy or collection of any tax under State law where a plain, speedy and
 10 efficient remedy may be had in the courts of such State.” 28 U.S.C. § 1341. The Tax Injunction
 11 Act is a “broad jurisdictional barrier . . . which limit[s] drastically federal district court
 12 jurisdiction to interfere with so important a local concern as the collection of taxes.”” *Lowe v.*
 13 *Washoe Cty.*, 627 F.3d 1151, 1155 (9th Cir. 2010) (internal quotation marks and citations
 14 omitted); *see also California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982).
 15 Consequently, the Tax Injunction Act “prohibits a federal district court, in most circumstances,
 16 from issuing an injunction enjoining the collection of state taxes” and additionally “prohibits a
 17 district court from issuing a declaratory judgment holding state tax laws unconstitutional.” *Grace*
 18 *Brethren Church*, 457 U.S. at 408; *see also Fair Assessment in Real Estate Ass’n Inc. v. McNary*,

21 ¹ Section 1343 grants district courts jurisdiction over certain civil actions. *See* 28 U.S.C. § 1333. Though
 22 the Court generally has jurisdiction to hear federal questions involving alleged violations of constitutional
 23 rights, 28 U.S.C. § 1331 specifically functions to limit federal jurisdiction over state tax claims where a
 “plain, speedy and efficient remedy” may be had in state court. *See* 28 U.S.C. § 1331. Consequently, the
 Tax Injunction Act “does not confer jurisdiction, but instead limits jurisdiction which might otherwise
 exist.” *Osceola v. Fla. Dep’t. of Rev.*, 893 F.2d 1231, 1232 (11th Cir. 1990) (citing *May v. Colorado*
Supreme Court, 508 F.2d 136 (10th Cir. 1974), *cert. denied*, 422 U.S. 1008 (1975)).

1 454 U.S. 100, 116 (1981) (finding that taxpayers are barred by principles of comity “from
 2 asserting § 1983 actions against the validity of state tax systems in federal courts.”).

3 The Supreme Court established a two-step inquiry to assess the applicability of the Tax
 4 Injunction Act. *Hibbs v. Winn*, 542 U.S. 88, 99 (2004); *Amazon.com LLC v. Lay*, 758 F.Supp.2d
 5 1154, 1163 (W.D. Wash. 2010); *see Wash. Trucking Ass’ns v. Trause*, 2012 WL 585077, at *3-4
 6 (W.D. Wash. Feb. 21, 2012). First, the Court must consider the nature of the relief requested by
 7 the plaintiff. *Hibbs*, 542 U.S. at 99; *Amazon.com LLC*, 758 F.Supp.2d at 1163. Second, the Court
 8 must consider whether the relief requested will enjoin, suspend or restrain the assessment, levy,
 9 or collection of state taxes. *Id.*; *see* 28 U.S.C. § 1341.

10 In considering the relief requested, and whether it enjoins the collection of a state tax, the
 11 Ninth Circuit has previously observed 28 U.S.C. § 1341 “serves ‘state-revenue-protective
 12 objectives’ and applies only if the requested relief would ‘reduce the flow of state tax revenue.’”
 13 *Fredrickson v. Starbucks Corp.*, 840 F.3d 1119, 1123 (9th Cir. 2016) (quoting *Hibbs*, 542 U.S. at
 14 104-106); *see also May Trucking Co. v. Or. Dep’t of Transp.*, 388 F.3d 1261, 1267 (9th Cir.
 15 2004). Consistent with this principle, in *Fredrickson*, the Ninth Circuit determined the
 16 withholding of state taxes is a method of tax collection under 28 U.S.C. § 1341. *Id.* at 1122.
 17 Consequently, the Ninth Circuit held 28 U.S.C. § 1341 strips a district court of jurisdiction to
 18 award declaratory and injunctive relief when the matter concerns the withholding of state taxes
 19 because granting such relief would impede the flow of state tax revenue. *Id.* at 1123.

20 In addition to the considerations explained above, the Court must also determine whether
 21 a “plain, speedy and efficient remedy” is available to Plaintiff in the state courts for the Tax
 22 Injunction Act’s jurisdictional prohibition to apply. 28 U.S.C. § 1341; *Grace Brethren Church*,
 23 457 U.S. at 411; *see Amazon.com LLC*, 758 F.Supp.2d at 1165-66. In determining whether a

“plain, speedy and efficient remedy” is available, the state court remedy need only meet “certain minimal procedural criteria.” *Hyatt v. Yee*, 871 F.3d 1067, 1073 (9th Cir. 2017) (citing *Lowe*, 627 F.3d at 1155 (quoting *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 512 (1981))). As such, the party challenging the state tax must have access to “a full hearing and judicial determination at which he may raise any and all constitutional objections to the tax.” *Id.* (quoting *Rosewell*, 450 U.S. at 513). The available state court remedy “need not necessarily be the best remedy available or even equal to or better than the remedy which might be available in the federal courts.” *Id.* (citing *Mandel v. Hutchinson*, 494 F.2d 364, 367 (9th Cir. 1974) (internal quotations and citations removed)).

Here, the Court concludes that the Tax Injunction Act is applicable to this action because HARPTA mandates the withholding of state tax, a method of tax collection pursuant to 28 U.S.C. § 1341. Plaintiff seeks declaratory and injunctive relief based on the operation of HARPTA in addition to a general request for damages based on its function. (Pl.’s Compl. at 5.) Plaintiff further requests that the Court find HARPTA unconstitutional. (*Id.*) Granting the declaratory and injunctive relief requested here would undoubtedly reduce the flow of state tax. See H.R.S. § 235-68(c); *Fredrickson*, 840 F.3d at 1123. Because Plaintiff’s requested relief necessarily impacts the withholding of a state tax under HARPTA, this matter clearly falls within the province of the Tax Injunction Act. *Fredrickson*, 840 F.3d at 1122. As such, this Court lacks subject matter jurisdiction to adjudicate Plaintiff’s claims because Plaintiff’s sought action would entail the repeal, injunction, or suspension of HARPTA. See 28 U.S.C. § 1341; *Fredrickson*, 840 F.3d at 1122-23.

Moreover, this Court is further restrained under the Tax Injunction Act from declaring HARPTA unconstitutional, see *Grace Brethren Church*, 457 U.S. at 408, and a “plain, speedy

1 and efficient remedy” is available because the Hawaii state courts provide for a full hearing and
 2 judicial determination at which Plaintiff may raise his constitutional objections to the tax.² See
 3 *Air Polynesia, Inc. v. Freitas*, 742 F.2d 546, 548 (9th Cir. 1984) (holding that because of the
 4 “broad authority” granted by H.R.S. § 232-11 to the Hawaii Tax Appeal Court “to decide all
 5 questions of fact and all questions of law, including constitutional questions,” the Hawaii Tax
 6 Appeal Court “can provide a full and fair hearing on these claims, and the minimal procedural
 7 requirements imposed . . . are therefore satisfied.”). Accordingly, the Court does not have the
 8 necessary subject matter jurisdiction to determine Plaintiff’s claims pursuant to 28 U.S.C.
 9 § 1341.

10 **B. Comity Doctrine**

11 Comity doctrine precludes the exercise of lower federal-court adjudicatory authority
 12 where an adequate state-court forum is available. *Levin v. Commerce Energy, Inc.*, 560 U.S. 413,
 13 421 (2010). The principle of comity reflects “a proper respect for state functions, a recognition of
 14 the fact that the entire country is made up of a Union of separate state governments, and a
 15 continuance of the belief that the National Government will fare best if the States and their
 16 institutions are left free to perform their separate functions in separate ways.” *Fair Assessment*,
 17 454 U.S., at 112 (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)). “Comity’s constraint has
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20 ² A taxpayer seeking to challenge HARPTA may submit a request to the Hawaii Department of Taxation
 21 for a refund. H.R.S. § 232-14.5(a). Upon the Department’s denial of the request, the taxpayer may appeal
 22 to the Tax Appeal Court of the State of Hawaii. H.R.S. § 232-14.5(b). The Hawaii Tax Appeal Court,
 23 hearing the matter de novo, “shall determine all questions of fact and all questions of law, *including
 constitutional questions.*” H.R.S. § 232-13 (emphasis added); *see also* H.R.S. § 232-11 (the Hawaii Tax
 Appeal Court “shall have the power and authority . . . to decide all questions of fact and all questions of
 law, including constitutional questions.”); H.R.S. § 232-16(e) (“An appeal to the [Hawaii Tax Appeal
 Court] shall bring up for review all questions of fact and all questions of law, including constitutional
 questions, necessary to the determination of the objections raised by the taxpayer or county in the notice of
 appeal.”).

1 particular force when lower federal courts are asked to pass on the constitutionality of state
 2 taxation of commercial activity.” *Levin*, 560 U.S. at 42.

3 Principles of comity additionally preclude this Court’s authority over this action. As
 4 previously explained above, an adequate state-court forum is available in the Hawaii state courts
 5 to hear and decide Plaintiff’s constitutional claims. *See Levin*, 560 U.S. at 421; *Fair Assessment*,
 6 454 U.S. at 116 n.8 (“We discern no significant difference . . . between remedies which are
 7 “plain, adequate, and complete” as that phrase has been used in articulating the doctrine of
 8 equitable restraint, and those which are “plain, speedy and efficient,” within the meaning of [28
 9 U.S.C.] § 1341.”) (citations omitted). Consequently, Plaintiff’s action is barred under comity
 10 doctrine.

11 C. Eleventh Amendment Sovereign Immunity

12 Under the Eleventh Amendment of the United States Constitution, “[t]he Judicial power
 13 of the United States shall not be construed to extend to any suit in law or equity, commenced or
 14 prosecuted against one of the United States by Citizens of another State, or by Citizens or
 15 Subjects of any Foreign State.” U.S. Const. amend. XI. The Eleventh Amendment bars an
 16 individual from suing a state in federal court without the state’s consent. *See Seminole Tribe of*
 17 *Florida v. Florida*, 517 U.S. 44, 54-55 (1996); *Nat. Res. Def. Council v. California Dep’t of*
 18 *Transp.*, 96 F.3d 420, 421 (9th Cir. 1996). Therefore, when a state is named as the defendant in
 19 an action, “[i]t is clear, absent consent, that the action is proscribed by the Eleventh
 20 Amendment.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984).
 21 Nevertheless, a plaintiff may proceed against a nonconsenting state if: (1) Congress has enacted
 22 “unequivocal statutory language” abrogating the state’s immunity from suit; and (2) some
 23 constitutional provision allows Congress to encroach on the state’s sovereignty. *Allen v. Cooper*,

1 140 S. Ct. 994, 1001 (2020) (quoting *Seminole Tribe*, 517 U.S. at 56); *see also Micomonaco v.*
 2 *Washington*, 45 F.3d 316, 319 (9th Cir. 1995).

3 Here, construing Plaintiff’s complaint liberally and in the light most favorable to him, the
 4 Court concludes the Eleventh Amendment bars Plaintiff’s action. The State of Hawaii is the sole
 5 named defendant in this action. (*See* Pl.’s Compl. at 1.) However, Hawaii has not waived its
 6 sovereign immunity for suits seeking monetary relief for violations of its state statutes filed in
 7 federal court. *See Price v. State of Hawaii*, 921 F.2d 950, 958 (9th Cir. 1990) (finding H.R.S.
 8 § 661-1 does not extend state consent to suits in federal court under the Eleventh Amendment);
 9 *see also Off. of Hawaiian Affairs v. Dep’t. of Educ.*, 951 F.Supp.1484, 1491 (D. Haw. 1996).
 10 Plaintiff’s arguments suggesting this suit may still proceed against the State of Hawaii are
 11 additionally misplaced. Plaintiff’s reliance on *Union Gas* is erroneous as it has since been
 12 expressly overruled by *Seminole Tribe*. *See id.*, 517 U.S. at 66 (concluding *Union Gas* was
 13 “wrongly decided”). Plaintiff has also failed to demonstrate Congress has passed any
 14 “unequivocal statutory language” abrogating Hawaii’s immunity to suit by way of the Fourteenth
 15 Amendment. *Id.* at 56. Consequently, this Court concludes that Hawaii is immune to suit in
 16 federal court in this action under the Eleventh Amendment.

17 **D. Leave to Amend**

18 Under Rule 15, the court should “freely give” leave to amend a pleading “when justice so
 19 requires.” Fed. R. Civ. P. 15(a)(2). When a court dismisses a *pro se* plaintiff’s complaint, the
 20 court must give the plaintiff leave to amend unless “it is absolutely clear” that amendment could
 21 not cure the defects in the complaint. *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015);
 22 *see also Lucas v. Dep’t of Corrs.*, 66 F.3d 245, 248 (9th Cir. 1995). Leave to amend is
 23 commonly found to be futile where the Eleventh Amendment bars plaintiff’s claims. *See Manson*

1 *v. Wash. Health Care Auth.*, 2017 WL 1364606, at *3 (W.D. Wash. Apr. 14, 2017) (denying
 2 leave to amend based on the Eleventh Amendment); *Block v. Wash. State Bar Assoc.*, 2016 WL
 3 1464467, at *10 (W.D. Wash. Apr. 13, 2016) (same).

4 As previously discussed above, both the Tax Injunction Act and Eleventh Amendment
 5 bar Plaintiff's action against the State of Hawaii. Regardless of how Plaintiff might amend his
 6 complaint, no additional allegations could cure the jurisdictional defects present in his claims.
 7 Accordingly, the Court concludes that it would be futile to allow Plaintiff to amend his
 8 complaint, and therefore, the Court declines to grant leave to amend and dismisses this action
 9 with prejudice.³

10 V. CONCLUSION

11 For the foregoing reasons, the Court hereby orders:

- 12 (1) Defendant's Motion (dkt. # 11) is GRANTED, and this case is DISMISSED with
 13 prejudice for lack of subject matter jurisdiction;
- 14 (2) The Clerk is directed to send copies of this Order to the parties.

15 Dated this 25th day of November, 2020.



16 MICHELLE L. PETERSON
 17 United States Magistrate Judge

19 ³ Generally, actions dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) are dismissed
 20 without prejudice. See *Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999)
 21 ("Dismissals for lack of jurisdiction 'should be . . . without prejudice so that a plaintiff may reassert his
 22 claims in a competent court.'") (quoting *Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988)).
 23 However, because Eleventh Amendment immunity additionally precludes this action against the State of
 Hawaii, this action is dismissed with prejudice. See *Doe v. Regents of the University of California*, 891 F.3d
 1147, 1153-54 n.6 (9th Cir. 2018) (finding dismissal with prejudice appropriate where action barred by
 Eleventh Amendment and granting leave to amend would be futile); *Eriksen v. Wash. State Patrol*, 308
 Fed. App'x. 199, 200 (9th Cir. 2009).